

Citation: *R. v. Stewart*, 2013 YKTC 35

Date: 20130410
Docket: 12-00900
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Judge Ruddy

REGINA

v.

TYLER JAMES STEWART

Appearances:
Ludovic Gouaillier
Kim Hawkins

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Tyler Stewart is before me for sentencing with respect to a single count of assault causing bodily harm to which he has entered a plea of guilty. The plea is in relation to circumstances arising on December 15, 2012. At that point in time, Mr. Stewart had apparently been out drinking. When he returned home he got into an argument with his spouse, Candice Marie Pauch. It escalated into a physical confrontation in which Mr. Stewart struck Ms. Pauch numerous times, resulting in significant bruising to the facial area and to one of her legs, as confirmed by the photographs which have been filed as Exhibits 1 and 2.

[2] The initial charges in relation to this matter include a number of different allegations, which are clearly not all covered by the facts which have been alleged and

admitted today. However, I have been provided a significant amount of information from counsel indicating why that is. It would appear that we have a circumstance of a particularly vulnerable witness, for whom it would have been extremely difficult to testify. She is not present today and has demonstrated some reluctance in the past. There are indicators that her having to testify would be particularly detrimental to her in her particular circumstances, which include some significant mental health issues. I am also advised, through Mr. Stewart's counsel, that he himself had concerns about the impact that a trial might have on her, and that is part of his motivation in being prepared to agree to a resolution today.

[3] Accordingly, there has been a resolution in terms of plea; his having entered a plea to a lesser included offence, and also resolution with respect to the appropriate disposition in all of the circumstances. It is being suggested that a sentence of time served, being credited at six months, plus an 18-month probationary term is appropriate in light of the unique factors in this particular case.

[4] There is an indication that Mr. Stewart has had his struggles in the past. He does have a criminal record. It does not include offences of violence, however. There is also an indication that he has more recently been making efforts to better his behaviour.

[5] The question for me, when I have a joint submission put before me like this, is slightly different than when I am the one determining, from the outset, what the disposition should be. Where there is agreement and a joint submission is put forward,

the question for me is whether, even if it is out of the range of usual sentences for this type of case, it is nonetheless appropriate in all of the circumstances.

[6] I am satisfied, based on the issues that have been disclosed to me today in terms of the particular vulnerability of this witness, along with the issues that may well have arisen in relation to proof that the sentence that is being suggested to me today is appropriate in all of the circumstances. For that reason I am going to adopt the joint submission as put forward.

[7] Mr. Stewart, the sentence will be one day deemed served by your attendance in court today, and I am going to ask that your record reflect that you are being credited for six months in pretrial custody, which is loosely credited at 1.5 to one. I take from the agreement of counsel that there is a concession on the Crown's behalf that Mr. Stewart would have been eligible for enhanced credit based on his behaviour while in custody and the loss of remission that flows from his remand status.

[8] There will be, following today's one day deemed served, an 18-month probationary term on the following terms and conditions, Mr. Stewart:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you notify your Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;

4. That you report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;

[9] I know, Mr. Stewart, you are normally resident in Watson Lake. You know where the Probation Officer is here in Whitehorse where you could start your reporting once you are released today?

[10] THE ACCUSED: Yes.

[11] THE COURT: Okay.

5. You will also be required to have no contact directly or indirectly or communication in any way with Candice Pauch, except with the prior written permission of your Probation Officer in consultation with Offender Supervision and Services, and Victim Services;
6. You are also required to not attend at the residence or place of employment of Candice Pauch, except with the prior written permission of your Probation Officer, again in consultation with Offender Supervision and Services, and Victim Services;
7. You will be required to take such assessment, counselling and programming as directed by your Probation Officer.

[12] THE COURT: Have I covered all of the agreed upon conditions?

[13] MR. GOUAILLIER: Yes.

[14] THE COURT: You understand those conditions, Mr. Stewart, and what will be expected of you?

[15] THE ACCUSED: Yes.

[16] THE COURT: Anybody have any questions?

[17] MR. GOUAILLIER: I'm sorry, Your Honour, I'm just looking at my sheet. In the rush of negotiation, my friend and I didn't discuss the issue of DNA, but it is a primary designated offence. So my apologies for not raising it before.

[18] THE COURT: I suspect, from the nature of the record, he has probably already provided a sample.

[19] MS. HAWKINS: I think Mr. Stewart's already provided, but --

[20] THE COURT: If it is already on record they will not take it, but I need to make the order. So there will be an order that you provide such samples of your blood as are necessary for DNA testing and banking. As I said, if the records show you have already provided a sample, then that would likely be the end of it, but it is a primary designated offence, so I am required to make the order.

[21] MR. GOUAILLIER: And similarly, the case requires the consideration of firearms Probation Order. There is a history between this couple but nothing that I heard that involves --

[22] THE COURT: That concerns us. Then I do not feel it necessary to exercise my discretion to impose a firearms prohibition, so I would decline to do so.

[23] I would waive the Victim Fine Surcharge given his custodial status, and I believe that just leaves us with the remaining counts.

[24] MR. GOUAILLIER: There will be a stay of proceedings, Your Honour.

[25] THE COURT: All right. My thanks to counsel and Mr. Stewart for their efforts in resolving this matter.

RUDDY T.C.J.